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لجنة حقوق الإنسان

الدورة الستون

البند ١١ من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسألة التعصب الديني

تقرير مقدم من السيد عبد الفتاح عمر، المقرر الخاص المعني بحرية
الدين أو المعتقد

إضافة

الزيارة المضطلع بها إلى جورجيا*

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. والتقرير الكامل مرفق كما هو باللغة الأصلية

*

وبالإنكليزية.

موجز

يقدم المقرر الخاص المعني بحرية الدين أو المعتقد هذا التقرير إلى لجنة حقوق الإنسان في إثر الزيارة التي قام بها إلى جورجيا في الفترة من ٣١ آب/أغسطس إلى ٧ أيلول/سبتمبر ٢٠٠٣، في إطار ولايته، بناء على طلب اللجنة وبدعوة من حكومة جورجيا.

وقد ركز المقرر الخاص انتباهه بصورة رئيسية، أثناء زيارته وفي جميع أجزاء هذا التقرير، على مكانة وأهمية الكنيسة الأورثوذكسية في جورجيا، بما في ذلك جوانب معينة من علاقتها مع الدولة، ووضع الأقليات الدينية غير الأورثوذكسية وسياسة الحكومة في ميدان الحرية الدينية أو حرية المعتقد، وخاصة إزاء أعمال التعصب والعنف الدينيين التي وقعت أثناء السنوات الأخيرة.

وقد التقى المقرر الخاص أثناء زيارته مع عددٍ معينٍ من ممثلي الحكومة الجورجية وممثلي السلطتين التشريعية والقضائية وكذلك مع ممثلي أغلبية الأقليات الدينية ذات الوضع المستقر في جورجيا. والتقى أيضا بمنظمات مختلفة غير حكومية.

وحذر المقرر الخاص، في استنتاجاته، من مخاطر العلاقة الحميمة بشكل مفرط بين الدولة والكنيسة الأورثوذكسية ومن مخاطر استخدام إحدهما للأخرى كأداة. وهو يؤكد في هذا الصدد على الآثار التي يمكن أن يلحقها اعتماد الاتفاق الدستوري بين الدولة والكنيسة الأورثوذكسية بمعاملة الأقليات الدينية بالبلد ويوصي بالاعتراف بهذه الأقليات على قدم المساواة. وفيما يتعلق بأحداث العنف الديني الخطيرة التي وقعت ضد أفراد تابعين لأقليات دينية، يطلب المقرر الخاص إلى السلطات الجورجية أن تلاحق دون توانٍ مرتكبي هذه الأفعال وأن تتخذ أيضاً تدابير لكي يكون بوسع الهيئات القضائية المكلفة بمباشرة الإجراءات ضد هؤلاء الأخيرين أن تؤدي عملها في ظل التمتع بكامل الأمن والاستقلالية ولكي يتمتع الضحايا بالحماية بطريقة مناسبة. ويوجه المقرر الخاص أخيراً انتباه السلطات الجورجية إلى الرسائل التي تحض على الكراهية الدينية والتي يوجهها بعض المسؤولين السياسيين أو بعض وسائط الإعلام وإلى ما على هذه السلطات من التزامات بموجب القانون الدولي.

Annex

**REPORT BY MR. ABDELFATTAH AMOR, SPECIAL RAPPORTEUR ON
FREEDOM OF RELIGION OR BELIEF, ON HIS VISIT TO GEORGIA
(31 AUGUST-7 SEPTEMBER 2003)**

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Introduction

1. From 31 August to 7 September 2003, the Special Rapporteur on freedom of religion or belief paid a visit to Georgia in fulfilment of his mandate, at his request and at the invitation of the Georgian Government.
2. For the most part, he worked in the capital of the country, T'bilisi, where the great majority of the religious activity in the country takes place and where most religious communities are based. He made one trip, on 11 September 2003, to Gori, some 60 km to the west of the capital.
3. During his visit, the Special Rapporteur held talks with Georgian officials: the Minister and Secretary of State for Foreign Affairs, the Minister of Defence, the Minister of Justice, the President of the Supreme Court, the mayor of T'bilisi, the deputy secretary for human rights issues of the National Security Council, the Vice-Minister of the Interior, the Deputy Ombudsman, the Vice-President of the Parliament and members of the parliamentary committee on human rights. He also had a meeting with a member of Parliament, the president of the political party "Georgia Above All". Lastly, the Special Rapporteur had the honour of an interview with the President of the Republic.
4. The Special Rapporteur also had talks with representatives of religious communities, including His Beatitude Ilia II, the Patriarch of the Georgian Church (Georgian Orthodox Church); Father Basil Kobakhidze of the Georgian Orthodox Church; representatives of the Orthodox Church in Georgia (a dissenting school), the T'bilisi and Kuthaisi Roman Catholic Church, the Armenian Apostolic Church, the Baptist Church, the Lutheran Evangelical Church, the Russian Pentecostal Church and the Word of Life Church; a representative of the Muslim community; a representative of the Jewish community, representatives of the Baha'i community and Jehovah's Witnesses.
5. Non-governmental human rights organizations were also consulted, among them the Liberty Institute and Human Rights Watch, as were representatives of various international organizations such as the Organization for Security and Co-operation in Europe, and the Special Representative of the Council of Europe Secretary-General in Georgia.
6. Lastly, the Special Rapporteur attended an international seminar on religious freedoms in Georgia put on in T'bilisi on 5 September 2003 by the International Center on Conflict and Negotiation (ICCN).
7. The Special Rapporteur wishes to thank the Georgian authorities for their invitation and cooperation. He is also very grateful to the fine non-governmental interlocutors he met. Lastly, he expresses his deep thanks to the United Nations Development Programme Resident Representative and staff in T'bilisi for their excellent cooperation throughout his visit.
8. During his visit and in this report, the Special Rapporteur has concentrated on the status and importance of the Georgian Orthodox Church, the situation of non-Orthodox religious minorities and government policy on freedom of religion or belief, especially as regards the incidents of intolerance and religious violence which have taken place in recent years.

I. HISTORICAL AND POLITICAL SETTING

9. Georgia, with a population of about 5.5 million, extends over an area of 69,700 sq km. The population is 70.1 per cent Georgian, 8.1 per cent Armenian, 6.3 per cent Russian and 5.7 per cent Azeri. The country is geographically very varied and also has a unique language and culture.
10. In 1783, King Irakli II placed Georgia under Russian protection, and Tsar Paul I of Russia annexed the country in 1801. The monarchy was abolished at that time and the Georgian Orthodox Autocephalous Church was placed under the authority of the Russian Synod.
11. Between 1918 and 1921, after the fall of the Russian empire, Georgia enjoyed a brief period of independence until the Red Army invaded the country. It then became a Soviet socialist republic. During the Soviet period three autonomous republics were set up on Georgian territory: Abkhazia, Ajaria and Southern Ossetia.
12. In March 1990, as the Soviet Union was breaking up, the Georgian Parliament denounced the treaties binding Georgia to the Soviet Union and, after a referendum, Georgia proclaimed independence on 9 April 1991. On 31 May 1991 the first President of the Republic, Zviad Ghamsakhurdia, was elected in a nationwide poll but the onset of civil war and an economic crisis rapidly led to his downfall. Edward Shevardnadze was elected President in turn in October 1992.
13. The new Constitution adopted in 1995 gave the President substantial powers, including the authority to appoint the Council of Ministers. The Council is answerable to Parliament, which consists of a single chamber of 235 members elected for a four-year term. The most recent elections were held on 2 November 2003. The outcome was challenged; this led to a fresh situation, bringing about the resignation of President Shevardnadze.
14. In terms of international law, Georgia acceded to the six main international human rights agreements between 1994 and 1999. Pursuant to its treaty obligations, it submitted its second periodic report to the Human Rights Committee at its fifty-seventh session in March 2002 (CCPR/C/GEO/2000/2). Among its principal subjects of concern, the Committee made the following comments and recommendations:

The Committee notes with deep concern the increase in the number of acts of religious intolerance and harassment of religious minorities and various creeds, particularly Jehovah's Witnesses. The State party should take the necessary measures to ensure the right to freedom of thought, conscience and religion as provided in article 18 of the Covenant. It should also: (a) investigate and prosecute documented cases of harassment against religious minorities; (b) prosecute those responsible for such offences; and (c) conduct a public awareness campaign on religious tolerance and prevent, through education, intolerance and discrimination based on religion or belief.
15. After the attacks of 11 September 2001, Georgia, like its Russian neighbour, swiftly declared its support for the anti-terrorist coalition led by the United States of America. That being so, the United States stepped up its military aid to Georgia substantially in 2002.

II. RELIGIOUS MAKE-UP

16. The great majority of the Georgian population (70 per cent) claims to belong to the Georgian Orthodox Church. The Russian and Greek Orthodox churches in Georgia are subordinate to the Georgian Orthodox Church. There are also a small number of Russian adherents, chiefly to two dissenting Orthodox schools, the Malakane and the Dukhobors, most of whom have left the country. Lastly, a dissenting movement formed the Orthodox Church in Georgia in 1997.

17. During the Soviet period, the number of operating churches and priests fell sharply and religious education was almost non-existent. Since independence, however, the number of churchgoers has risen steadily. Today, the Church numbers four theological seminaries, two academies, a number of schools, 27 dioceses, 700 priests, 250 monks and 150 nuns.

18. A number of other religions have long formed part of the Georgian religious landscape, among them the Armenian Apostolic Church, the Roman Catholic Church, Judaism and Islam. A large number of Armenians live in the Javakheti district. Islam is the main religion of the Azeris and the northern Caucasian ethnic communities living in the eastern part of the country. There is also a strong Islamic presence in Ajaria and Abkhazia. Muslims make up about 5 per cent of the population. There have been Jews in Georgia for 2,600 years: the main communities are in T'bilisi and Kuthaisi. There are no more than about 8,000 Jews since most of them fled the country in the early 1970s and the late 1980s. There is also a small number of Lutherans (around 1,000, they claim), descendants of Germans who settled in Georgia. Lastly, there has been a small community of Yezidi Kurds living in the country for some centuries.

19. More recently, and particularly since the end of the Soviet period, a number of reform or Protestant movements have appeared or become more prominent. These include Baptists, Seventh-Day Adventists, Georgian and Russian Pentecostals, Jehovah's Witnesses, the New Apostolic Church, the Word of Life Church, the Assembly of God, Baha'is and adherents of Hare Krishna.

III. THE LEGAL POSITION ON FREEDOM OF RELIGION OR BELIEF

1. Constitutional

20. The Constitution of Georgia deals with the question of freedom of religion and belief in relatively general terms. Article 19 states that:

1. Every individual has the right to freedom of speech, thought, conscience, religion and belief.
2. The persecution of an individual for his thoughts, beliefs or religion is prohibited as is compulsion to express opinions about them.
3. These rights may not be restricted unless the exercise of these rights infringes upon the rights of other individuals.

21. It is worth noting that, apart from the prohibition on persecution based on religion or belief, the only limits on this right laid down in the Constitution are those that might apply to the exercise of these rights if the rights of other individuals were infringed. This latter paragraph has sometimes been invoked to penalize proselytizing stances taken by religious minorities which are said to infringe upon the freedom of religion of members of the Orthodox Church. Thus the limits laid down in the Constitution are not entirely similar to those called for under article 18 of the International Covenant on Civil and Political Rights, which relate to the manifestation of religion or belief and are necessary to protect public safety, order or health.

22. The Constitution also bans discrimination of any kind, inter alia on grounds of religious appurtenance. Article 14 states:

[e]veryone is born free and is equal before the law, regardless of race, skin colour, language, sex, religion, political and other beliefs, national, ethnic and social origin, property and title of nobility or place of residence.

23. One distinctive feature of the Georgian Constitution is that it explicitly recognizes the role played by the Orthodox Church in the history of the country. According to article 9:

[t]he State recognizes the special importance of the Georgian Orthodox Church in Georgian history but simultaneously declares complete freedom of religious belief and confessions, as well as independence of the Church from the State.

2. Legislative

24. Apart from the Constitution, Georgia does not at present have any particular legislation establishing a legal regime to govern religious communities and faiths. While that does not seem to be a problem for the Georgian Orthodox Church, in part because of the constitutional agreement between it and the Georgian State which will be discussed below, it is, according to some informants, a real drawback for all other religious communities established in the country which lack a legal status enabling them to go about their business unhindered. The Special Rapporteur learned that some religious minorities, such as the Jehovah's Witnesses (see below), had tried to register as legal entities.

25. The Special Rapporteur has, however, been informed that a bill on the subject has been drawn up by the Ministry of Justice. The bill, which has yet to be discussed in Parliament, defines what is meant by freedom of religion or belief, governs relations between religious communities and the State, the religious education system, the status of religious bodies, the procedure and conditions applicable to their registration, religious activities and literature, objects of worship, and the property and tax status of religious communities and faiths. The Special Rapporteur gathers that the bill has been submitted to some international organizations for them to evaluate its conformity with international law on the subject, and prima facie poses no major difficulties.

26. A law on religions is supported in principle by most members of the Government, the Georgian Orthodox Church and most religious minorities. Some commentators pointed out that while such a law might not be necessary in theory, it was probably necessary given the current situation in Georgia. Other

informants felt that some simple amendments, for example to the parts of the Civil Code governing the legal personality of religious communities and associations, would suffice to guarantee the various aspects of freedom of religion.

27. In any event, the problem seems to be what the bill will say when it is finally adopted, since the Orthodox Church wants to be granted special status and left beyond the scope of the law on religions, which it regards as “sects”, while the religious minorities would like the law to establish that all religions are equal. It was emphasized that while the bill as currently worded was acceptable as far as respect for religious freedoms went, it might be amended by Parliament in a manner inconsistent with international law in order to win the support of political parties not favourably disposed towards religious minorities.

IV. THE ORTHODOX CHURCH

28. Orthodoxy is not a State religion in the formal sense. Nonetheless, the importance of the Georgian Orthodox Church at all levels of Georgian society and the constitutional agreement (see below) make it a State religion de facto. The results of a recent poll by a non-governmental organization show that the Orthodox Church is the institution in which Georgians place most trust - far more than in political institutions. More than just being a member of a church, many Georgians consider that being Orthodox is an essential feature of the Georgian national identity.

1. The constitutional agreement

29. On 14 October 2002, the Orthodox Church signed a constitutional agreement with the Georgian State. This agreement gives the Orthodox Church special status, defines the relationship between the Church and the State, delimits the authority of the Church and defines its rights and obligations. It exempts members of the clergy from military service, institutes army and prison chaplains and makes provision for Orthodox Christianity to be taught in public schools. Being of constitutional rank, the agreement sits above laws and international treaties in the hierarchy of Georgian rules, but the Special Rapporteur has not been given precise, consistent information on the exact relationship between the Constitution and the agreement: whether, in other words, the agreement ranks on a par with the Constitution or just below it.

30. The Constitutional agreement raises various issues. As regards the status of religious minorities in Georgia, the agreement does not prima facie contain any provision liable to violate international law on freedom of religion or belief or prove discriminatory except in certain special situations such as the one described below. Indeed, the draft of the agreement was submitted to an international organization so that it could assess whether it was consistent with international law. Most of the country’s religious minorities, moreover, were consulted while the text was being drafted, and they do not appear to have raised major objections; some even issued joint statements with the Orthodox Church hailing the new text. Even so, a number of informants emphasized that the Government was said to have suggested that various religious minorities should enter into similar agreements, but nothing has been done as yet. More recently, the Government is reported to have broken off talks on such an agreement with the Roman Catholic Church.

31. More fundamentally, it has been argued that it was less the content of the agreement than its very existence that posed a problem, since the religious minorities, already lacking any real status, found themselves pushed even further towards the sidelines while the powers and rights of the Orthodox Church were extended in a number of areas. In the current setting of intolerance towards religious minorities, the agreement was said to accentuate the imbalance between the minorities and the Orthodox Church and provide further justification for those who opposed the existence of religious minorities.

32. Last, the wording of the agreement rules out any notion of dissidence within the Orthodox Church. This may raise problems as regards the consistency of the agreement with both international law and the Georgian Constitution. Here, the situation of the Orthodox Church in Georgia, a dissenting movement of the majority Orthodox Church, is telling. For purely doctrinal reasons, the Orthodox Church in Georgia has not recognized the authority of the Patriarch since 1997. Under article 6, paragraph 6, of the constitutional agreement, however,

[u]pon agreement with the Church [i.e. the Georgian Orthodox Church], the State issues permits or licences for using the official symbols and terminology of the Church as well as for producing, importing and distributing items for Church worship.

33. This means that the Orthodox Church in Georgia ought to secure the assent of the majority Church, which appears inconceivable to both sides. Article 6 of the agreement may thus be likely to violate the rights of certain individuals as set forth in article 14 of the Constitution, guaranteeing equality and non-discrimination, and article 19, guaranteeing freedom of religion, as well as international law on the subject. An appeal along these lines was lodged with the Constitutional Court but rejected, chiefly on the grounds that the rights of the plaintiffs had not been shown to be adversely affected by the agreement.

2. The Orthodox Church and religious minorities

34. On the topic of coexistence with other religious minorities, the Orthodox Church stresses at the outset that, because of its history, Georgia is a country of religious tolerance in which a number of religious communities have evolved, without friction, side by side for centuries. Such historical religious tolerance is, however, generally cited in connection with members of the so-called “traditional” religious communities such as Muslims, Jews, Catholics or Armenians. The Orthodox Church’s attitude towards other religious communities which have taken root since the break-up of the Soviet Union is less clear-cut.

35. The Orthodox Church believes it has a historical role as guardian of the morals and spiritual life of the nation and, as such, ought to enjoy a certain precedence over the other religious communities present in Georgia.

36. The Patriarchate also criticizes certain practices of religious minorities which it regards as illegal, in particular the “proselytizing” by Jehovah’s Witnesses which it considers unacceptable. Other practices observed by Jehovah’s Witnesses, such as refusing blood transfusions and declining to perform military service, are regarded by the Orthodox Church as intolerable.

37. The manner in which the Orthodox Church's attitude to such matters is manifested varies, depending on whether it is expressed by parish - particularly rural - clergy or the top of the ecclesiastical hierarchy, apart from odd occasions such as when Metropolitan Atanase Shakhshvili of Rustavi declared during a television broadcast on 10 February 2002 that "members of sects such as the Jehovah's Witnesses, Baptists, Anglicans and Pentecostals should be executed". A number of informants explained that Orthodox priests tend to be poorly educated and take a rather intolerant line owing to their ignorance of other religious communities. The term "sect" is often used in a very pejorative sense to describe any movement that is not Orthodox or is not regarded as "traditional".

38. As regards religious extremism and violence, the Orthodox Church authorities deplore all violence and point out that Basil Mkalavishvili, the chief instigator of the acts of religious violence (see below, paragraphs 69-80), was excommunicated in 1997. Some parties maintain, however, that in a number of instances Orthodox priests have taken part in - and sometimes organized - violence against religious minorities, and the Church authorities have not distanced themselves sufficiently from them.

39. The Special Rapporteur has also noted the emergence of ultra-Orthodox organizations spreading messages similar to those of Basil Mkalavishvili and his supporters. The most important such organization is called *Jvari* (the Cross), and its leader, Paata Bluashvili, is said to have taken part personally in attacks on religious minorities.

40. The Orthodox Church does not appear to be moving actively to foster religious tolerance of some religious minorities, if one discounts such occasions as its recent participation in an ecumenical service held at the Baptist Church in T'bilisi on 24 January 2003.

3. Relationship between Church and State

41. As discussed above, orthodoxy is not formally a State religion. The Orthodox Church does, however, have a special place in Georgian society which gives it fairly substantial influence over government policy. As a result, the Special Rapporteur observed that politicians tend to use Orthodox religion as a form of tool and, in some cases, take advantage of the religious fervour of most Georgians. It would be a rare politician, likewise, who had thus far taken an overtly critical attitude towards the Orthodox Church or some of its intrigues. On the other hand, the Orthodox Church appears to make regular use of its unchallenged influence over society to bend government policy in certain directions.

V. RELIGIOUS MINORITIES

42. During his visit, the Special Rapporteur met a great many representatives of the religious minorities established in Georgia. Some of these appear to benefit from a sort of special consideration on the part of the majority religion because they have been present in the country for a long time and are thus regarded as "traditional" while others, not considered "traditional" because they have arrived in Georgia since the break-up of the Soviet Union, inspire distrust at best, are described as "sects" and are often the targets of intolerance or physical and/or psychological violence.

1. Jews and Muslims

43. The Muslim and Jewish communities in Georgia face few serious obstacles to the practice of their religions. They say they have not encountered religious intolerance on the part of the Orthodox Church and do not believe that the authorities have taken any action that might restrict their freedom of religion and belief. Similarly, the Special Rapporteur has not been told of any anti-Semitic or anti-Islamic incidents. The Muslims did mention problems when it came to building new mosques.

2. Lutherans, Baptists, Armenians, Anglicans and Roman Catholics

44. Among the Christian communities, the Lutheran Church, the Baptist Church, the Roman Catholic Church, the Armenian Apostolic Church and the Anglicans have set up an association, Traditional Christian Churches, with the primary objective of mutual protection against actions that might encroach upon their freedom of religion or belief. It was for this reason that they wished to meet the Special Rapporteur together. They have nevertheless been confronted by very different problems, because in the eyes of the Georgian Orthodox Church some of them are not “traditional”.

45. The Lutherans, who number around 1,000, have had very few problems with practising their religion and have not really encountered any problems in such matters as building places of worship. They do not, however, have any relations with the Orthodox Church.

46. The Roman Catholics, who number around 50,000, also say they have encountered few obstacles in exercising their right to freedom of religion, citing just one incident which occurred during a pilgrimage in 2002. They do refer to some difficulties with the ownership of certain places of worship, especially in regions far from the capital. Five Roman Catholic Churches (in Bathumi, Kuthaisi, Gori, Ude and Ivliita), said to have been confiscated during the Soviet period and handed over to the Orthodox Church, have not yet been returned. The Catholics also face numerous obstacles when seeking permission to build places of worship, sometimes having to wait 5 to 10 years for a building permit. In some cases the local authorities are said to have told representatives of the Catholic Church that they needed to obtain permission from the Orthodox Church to build a church.

47. The Special Rapporteur was notified of an incident on 28 March 2003 in which individuals armed with axes destroyed the antenna of the independent radio station Dzveli Kalaki, probably because of its weekly Catholic programme which annoyed the local Orthodox Bishop.

48. The Armenians, one of the largest minorities in the country, have not often suffered religious intolerance, probably because they have lived side by side with the Georgians for many centuries and their religion is regarded by the Orthodox as “traditional”. They have nevertheless had problems with the ownership of property, some of their churches having been confiscated during the Soviet period.

49. The Special Rapporteur was informed by other sources that Armenians are often discriminated against, but more on the grounds of their nationality than their religion.

50. The Special Rapporteur was unable to obtain precise information about the situation of the Anglicans, who were unable to attend the meeting he had with the other communities in the association.

51. The Baptists, who number around 5,000, appear to be the member community that has come in for most religious intolerance in Georgia. The most notable event occurred on 3 February 2002, when Basil Mkalavishvili and 150 of his sympathizers seized a warehouse where Baptist literature was stored and set fire to thousands of bibles and other religious works. The incident was filmed and broadcast by a television channel.

52. The Baptists have also been prevented from making prison visits as they are accustomed to do at certain periods of the year; they regard this as another undesirable consequence of the constitutional agreement, under which the prison authorities are bound by the Orthodox Church's refusal to allow visits by representatives of other faiths.

3. Jehovah's Witnesses, Pentecostals, Word of Life Church

53. Besides the communities above, there are a number of other, small religious communities which suffer religious intolerance. They are all the more vulnerable for being small and little-known and, hence, readily categorized as "sects".

54. The community of Jehovah's Witnesses, present in the country since 1953 but with a relatively limited membership (estimates put it at 15,000), has without question been the target of the most acts of intolerance and religious violence. Since October 1999, it has been subjected to 144 attacks and other incidents. Most of the attacks are said to have been led by Basil Mkalavishvili, an unfrocked Orthodox Church priest. Since the attacks started, the Jehovah's Witnesses have been unable to assemble in large numbers although this is one of the distinctive features of their community. What is more, they have on several occasions been denied permission to rent a hall for their gatherings for reasons to do with their religious beliefs.

55. The Special Rapporteur also notes that a number of incidents which have had the effect of limiting or violating the Jehovah's Witnesses' freedom of religion were provoked by the forces of law and order or other local authorities. On two occasions, for example, the customs authorities held back cargoes of religious literature belonging to Jehovah's Witnesses.

56. More significantly, in 1999 the member of Parliament and President of the "Georgia Above All" party, Guram Sharadze, brought proceedings before the Georgian courts seeking the dissolution pursuant to article 31 of the Civil Code of two legal entities registered by Jehovah's Witnesses, on the grounds that no religion can be granted registration. On 26 June 2000, the Court of Appeal in T'bilisi found partly in Sharadze's favour and the community of Jehovah's Witnesses took the case to the Supreme Court. On 22 February 2001, the Supreme Court upheld the Court of Appeal's ruling, finding that the law under which cults should be registered in public law did not yet exist and that the Jehovah's Witnesses could not be registered in another guise, although some 15 or so associations that engage in cult activities are registered in Georgia. In the face of the violent criticism that this decision aroused, the Supreme Court officially clarified its position, explaining that cancelling the registration of Jehovah's Witness associations would have no effect on Jehovah's Witnesses' exercise of their freedom of religion.

57. The Special Rapporteur has also been informed that Jehovah's Witnesses, who are normally conscientious objectors, are no longer having problems with military service and win exemption fairly easily if they perform alternative, civilian service.

58. The Pentecostals, who number roughly 5,000 in Georgia, are also often persecuted; their situation has been deteriorating slowly over the past four years, to the point where they now face substantial difficulties in assembling to practise their religion. On several occasions they have been prevented from gathering by unidentified individuals accompanied by Orthodox priests, and the priests have sometimes entered the buildings where services were taking place to strike worshippers or tear up Gospels.

59. The Word of Life Church and the Assembly of God are churches associated with the Pentecostals. The Word of Life Church was founded in Georgia roughly seven years ago and today consists of about 600 members who meet on the premises of the Georgian Pentecostalist Church. These members have been subjected to religious violence on a number of occasions. On 22 December 2001, for example, they were attacked by Basil Mkalavishvili and his associates, who beat them up and smashed property. Members of the Word of Life Church have also been the subject of offensive and slanderous articles in the Georgian press.

60. Other religious and faith-based communities suffer less persecution, either because they are very small or because they are little-known. These include the Baha'is, who arrived in Georgia recently and number approximately 1,500. Generally speaking, the Baha'i community is able to operate without hindrance and is developing without problems. The Baha'is, who are registered as a civil, not religious, association, are currently building a new centre for the community and have had no problem doing so. They do report having had some problems with the customs authorities.

VI. INTOLERANCE AND RELIGIOUS VIOLENCE, AND REACTIONS BY THE GEORGIAN AUTHORITIES

61. The main source of concern as far as freedom of religion or belief in Georgia is concerned is certainly the frequency and extent of the persecution to which many of the religious minorities established in Georgia are subject. Generally speaking, and leaving aside some informants who mentioned incidents involving religious minorities going back to the early 1990s, it would appear that acts of intolerance and religious violence really began in 1999 and have grown more serious and diverse since.

62. A recent document offers a fairly good illustration of the situation as regards freedom of religion or belief in Georgia. On 24 January 2003, representatives of the Orthodox and other Christian churches came together in the Baptist Church in T'bilisi for an ecumenical service. In a joint letter to the President of the Republic, the church representatives present described what then took place as follows:

When all the bishops, clergymen, the faithful, representatives of different layers of our society and representatives of embassies accredited in T'bilisi started to gather at the Cathedral Baptist Church, they were attacked by a well-organized group of hooligans led by Basil Mkalavishvili.

They physically and verbally insulted clergymen [and] the faithful. They penetrated the church building and raided the sanctuary. They tore religious literature and forcefully occupied both the church and the entrance of the church. The leader of hooligans was threatening and insulting verbally all the people who had come to the Cathedral church and prevented them to enter the sanctuary in order to hold the service there [...].

Even though the police had been informed about the service a few days earlier by the organizers of the ecumenical prayer service, they showed up at the spot with [some] delay [...].

1. Those responsible for violence and intolerance

63. In a number of cases, according to some sources, the local police have committed either acts of physical violence or acts amounting to other violations of the freedom of religion or belief, such as confiscating religious literature or preventing people from joining a religious demonstration. Nonetheless, violence and other displays of religious intolerance are more normally the work of groups not in the employ of the State but belonging - or close - to the Georgian Orthodox Church, in a great many cases Basil Mkalavishvili and his sympathizers who are a well-organized gang and operate in concert.

64. Even if the Georgian authorities do not often seem to be directly involved in acts of intolerance or religious violence, the Special Rapporteur was told that in many cases the authorities have refrained from intervening and have not taken the necessary steps to prosecute those responsible for violence. Impunity is therefore real and uncontested, even by the authorities.

2. The origins of violence and intolerance

65. The origins of such religious intolerance and violence are not easy to identify. Apart from explanations citing a combination of economic reasons, politics and even the involvement of a foreign Power, the situation appears to be at least partly linked to recent Georgian history, in particular, the fact that Georgians were driven towards atheism over 80 years of Soviet rule and the means of repression used against the Orthodox clergy during that period.

66. According to certain informants, Georgia has also often been attacked by neighbouring countries and the continual threat hanging over the country has made defending the fatherland and the associated religion a civic duty. National sentiment in Georgia seems to go hand in hand with orthodoxy, and an excess of the one often gives rise to an excess of the other.

67. More specifically, the appearance of "new" religious movements since the collapse of the Soviet Union is often regarded as a foreign threat to the Orthodox Church and, hence, the nation. Some politicians have taken advantage of such fears, stirring up hatred of religious minorities (see below).

68. Besides this, deep ignorance of any religion other than Orthodox has been nurtured by intolerant, nationalistic speeches by politicians and Orthodox extremists.

3. The Mkalavishvili case

69. The (several sets of) proceedings currently pending against the defrocked Georgian Orthodox priest, Basil Mkalavishvili, who has been charged with a series of attacks on religious minorities, say much about the current situation as regards freedom of religion or belief in Georgia.

70. Of the hundred or so attacks on Jehovah's Witnesses and other religious minorities since October 1999, most have been led by Basil Mkalavishvili. Since October 1999, Mkalavishvili has openly proclaimed that he has been conducting a war against faiths he regards as detrimental to Georgia. He is quite frank about his views and intentions, even when his intentions are violent, and makes no secret of his alleged connections with the forces of law and order.

71. On 16 March 2001, the Prosecutor General of Georgia ordered an inquiry into allegations of religious violence perpetrated by Basil Mkalavishvili and his sympathizers. Charges were laid against Mkalavishvili and Petre Ivanidze, a close associate, on 3 September 2002.

72. Despite these charges Basil Mkalavishvili is said to have announced at a demonstration in T'bilisi on 24 September 2001, the day after an attack on a Pentecostal church in the district of Gldani, that he was about to begin a fresh campaign against non-Orthodox religious groups in Georgia. On 28 September 2001, he and his sympathizers blocked the motorway in T'bilisi to identify cars and buses transporting Jehovah's Witnesses to a meeting in the southern town of Marneuli. On 23 December 2001, he and a hundred or so sympathizers are also said to have attacked members of the Pentecostalist Word of Life Church.

73. A criminal trial against Basil Mkalavishvili and Petre Ivanidze finally began with a hearing in the Didube-Shugurethi district court in T'bilisi on 25 January 2002, but it was immediately adjourned. After the hearing, Mkalavishvili and his sympathizers reportedly went to the Stereo One independent television studio and told officials there to stop the broadcast of a daily programme from a Protestant church.

74. On 3 February 2002, Mkalavishvili and over a hundred supporters entered a warehouse in T'bilisi, carrying out and burning several thousand bibles belonging to the Baptist community and the United Bible Society (see above). This attack was criticized in a statement by the Patriarch and a letter sent to the President of Georgia by most of the country's religious minorities.

75. On 1 April 2002, a T'bilisi district court turned down a request by the city prosecutor to have Basil Mkalavishvili taken into pre-trial detention.

76. On 20 May 2002, Mkalavishvili and his supporters demonstrated in front of the Embassy of the United States of America to T'bilisi after 15 members of the United States Congress sent a letter to the Georgian President asking him to take concrete action to ensure the safety of all Georgians without distinction as to their religion.

77. The trial resumed on 25 October 2002 but was again adjourned *sine die* on 22 December 2002.

78. Though the President of the Republic stated at an ecumenical ceremony in T'bilisi Central Baptist Church on 14 March 2003 that those responsible for such acts would be punished, individuals armed with axes smashed the antenna of a radio station in Kuthaisi on 28 March 2003 because it was broadcasting a weekly Catholic programme (see above).

79. A more recent hearing, scheduled for 16 May 2003, again had to be postponed because the alleged victims, Jehovah's Witnesses, were reportedly reluctant to attend on security grounds. In the proceedings currently in progress, only the three incidents involving Jehovah's Witnesses have been retained for examination out of the five incidents with which the accused were originally charged.

80. In a recent development, on 4 June 2003, sympathizers prevented the police from apprehending Basil Mkalavishvili pursuant to an order to take him into pre-trial detention for three months. The most recent reports to reach the Special Rapporteur indicate that Mkalavishvili has not yet been found.

4. Attitude and position of the authorities

1. The Executive

81. The authorities, particularly at the ministerial level, mostly acknowledge that there is a real problem and say that steps must be taken to protect religious minorities and prosecute those that persecute them. The Minister for Foreign Affairs has even described the persecution of religious minorities as a "disgrace" for Georgia.

82. The authorities feel, however, that the current problem will not persist, considering that the impunity enjoyed to date by those responsible for the acts of violence is not a consequence of inadequate legislation or a lack of conformity between national and international law, but rather one of general inefficiency in enforcing Georgian law.

83. Given this situation, on 4 March 2003 the President of the Republic, who has openly condemned acts of violence and religious intolerance, issued decree No. 68 approving a Plan of Action on Strengthening Human Rights Protection of Minorities Permanently Residing in Georgia for 2003-2005. The main objectives of this plan are to restore the historical traditions of tolerance and peaceful coexistence among members of different ethnic and religious groups in Georgia, to promote and protect human rights and the freedoms of minorities, to encourage civil integration within Georgian society, and to forestall all displays of intolerance. Among the goals it sets, special note should be taken of the measures proposed to deal with problems of religious intolerance, including eliminating all forms of religious extremism and promoting a culture of tolerance, encouraging religious tolerance through the press and electronic media, identifying and prosecuting those responsible for religious extremism, and eliminating all forms of discrimination based on religion.

2. The judiciary

84. The authorities stressed that in no case was religious violence the result of State policy even if some members of Parliament support those responsible for such violence.

85. Some members of the judiciary felt that the rarity or absence of prosecutions for religious violence was part of a general problem and not limited to the religious sphere; Georgia was a young State, it had furnished itself with an appropriate arsenal of legislation, but was finding it hard to put that legislation into practice. Public prosecutors were not therefore solely to blame for shirking their responsibilities: the entire system was loath to put the individuals concerned on trial.

86. Unfortunately, the Special Rapporteur was unable to meet the Prosecutor General or other members of the Georgian prosecution system.

3. The legislature

87. On 30 May 2001 the Georgian Parliament passed a resolution on displays of religious extremism which stated that:

The law-enforcement bodies of Georgia should act in full conformity with the Constitution of Georgia and eliminate any manifestations of religious extremism;

The Public Defender of Georgia should pay particular attention to the manifestations of religion-based crimes and make sure that the religious freedoms of Georgian citizens guaranteed by the Constitution of Georgia are protected;

The parliamentary committees on the rule of law and administrative reform, on human rights and petitions [and] on civil society building and integration should elaborate appropriate legislative proposals to regulate the activities of various religious groups;

The Parliamentary Committee on Human Rights and Petitions and the Committee on Civil Society Building and Integration are responsible [for reporting], on a regular basis, on the implementation of this resolution.

88. Some members of Parliament nevertheless told the Special Rapporteur that they were concerned about what they called a campaign by religious minorities, the Jehovah's Witnesses in particular, against the Orthodox Church. In other words, the Jehovah's Witnesses were themselves said to be violating the right to religious freedom. These same members of Parliament also asserted that the Jehovah's Witnesses, in refusing military service and blood transfusions, had no regard for the interests of the State.

4. The Public Defender

89. The Public Defender condemned the Government's and security forces' irresponsible attitude towards acts of intolerance and religious violence. In most cases of religious violence, he felt that the authorities responsible had failed to react or had not reacted enough.

90. The Special Rapporteur was informed that the Public Defender's services had set up a special-purpose centre on freedom of religion, one purpose of which was to receive and consider all complaints about acts of intolerance or religious violence. The centre also evaluated legislature standards on the subject and had been the original source of the bill referred to previously.

91. As part of a series of recommendations, the Public Defender's office believed it was necessary to set up an appropriate governmental facility to look after religious minorities and that the governmental authorities must pay more attention to teaching activities, in particular to foster religious tolerance.

5. Action taken by the authorities in response to the violence

92. The Special Rapporteur has been informed by the authorities that between 1999 and 2003 the investigative departments of the Ministry of the Interior conducted inquiries into 22 criminal cases involving intolerance or religious violence. Of those 22 cases, 8 were forwarded to the prosecutor's office and 14 were retained at the Ministry. Of the latter, 3 cases have been referred to the courts for prosecution; the investigations into the other 11 have been broken off. The authorities have also told the Special Rapporteur that the great majority of the investigations are concerned with Basil Mkalavishvili or his sympathizers.

93. This being the case, according to information made available to the Special Rapporteur at the time of his visit to Georgia, it would appear that no one has yet been found guilty of religious violence by the Georgian courts. And apart from the case relating to the first violent attack on a religious minority on 17 October 1999, in which the two individuals charged with destruction of property were ultimately acquitted, no judgement on the merits - not even an interim one - of any act of religious violence committed since October 1999 seems to have issued from a Georgian judicial body.

94. The Special Rapporteur has also been informed that at every hearing of the court dealing with the Mkalavishvili affair, the courtroom has been full of Mkalavishvili's supporters and the atmosphere has been intimidating. On numerous occasions, sympathizers are said to have threatened the claimants for civil indemnification, their lawyer and even the judges. Members of human rights organizations and a reporter attending the trial were physically attacked by sympathizers. To date, the authorities have not taken appropriate steps to secure the premises so that, for example, the alleged victims can attend the proceedings.

95. The authorities are at pains to point out that the police and other services are also supposed to try to ease tensions between the majority of the population and religious minorities - to act as go-betweens. They point out in this connection that religious minorities, the Jehovah's Witnesses in particular, are guilty of an "enormous amount" of provocation. They refer, for example, to the insistent way in which Jehovah's Witnesses try to enter people's homes in order to spread their message, or to their alleged habit of deliberately choosing to gather in places where there are nothing but members of the Orthodox Church, knowing that they risk being attacked. They do not, however, cite any physical action which the Jehovah's Witnesses have committed.

96. Last, the authorities have told the Special Rapporteur that in cases where the police have not acted in accordance with the rules or have deliberately refrained from intervening, those at fault have been individually punished. In particular, the Minister of the Interior dismissed two police officers and reprimanded two other senior officials for failing to take timely action during the events of 24 January

2003 (see above) when the police had been notified two days beforehand that the service was to take place and that the church would need protecting.

VII. RELIGIOUS INTOLERANCE AND FREEDOM OF EXPRESSION

97. The Special Rapporteur was told by a number of informants of the role played by the media in religious intolerance in Georgia, and of speeches and statements by politicians arousing religious hatred.

98. The press, especially the written press, in Georgia plays an influential role vis-à-vis the level of religious tolerance in the country. Part of it has become the self-appointed organ of the Orthodox Church, spreading messages which some regard as populist and describing religious minorities as so many “sects” prejudicial to Georgian society. One of the major complaints levelled at the press is the lack of training among reporters, who put about images of religious minorities that are often wrong.

99. Some prominent political figures put out statements that tend to uphold the Orthodox majority at the expense of religious minorities. Some even make statements that are overtly intolerant of certain religious minorities. The Special Rapporteur met one of these, the member of Parliament Guram Sharadze. Mr. Sharadze believes he is open to and tolerant of the religions traditionally established in Georgia and considers that he has fought all his life to enable the different religious communities to coexist harmoniously within the country. On the other hand, he says he is fighting tooth and claw against aggressive sects such as the Jehovah’s Witnesses which “force their way into churches”, “burn literature” and “smash crosses” or bring about the deaths of Georgian children with principles such as their ban on blood transfusions. Guram Sharadze still says that he is opposed to violence of any kind, and on this point parts company with Mkalavishvili.

VIII. EDUCATION

100. The Special Rapporteur has been informed that many schoolchildren belonging to religious minorities, in particular Evangelists, Jehovah’s Witnesses and Baptists, have been threatened, insulted and physically assaulted at school because of their religion. Those responsible for such acts of intolerance are either other schoolchildren or teachers and principals at the schools concerned.

101. Against this background, and following a press article in which Basil Mkalavishvili supposedly called on the Minister of Education to “get rid of” members of the teaching profession who were Jehovah’s Witnesses, the teachers in one district of T’bilisi are said to have responded that they would spare no effort to “inculcate” proper Orthodox values into their pupils, and were emphatic within their own circles that renouncing orthodoxy was tantamount to renouncing one’s nationality.

102. It is also reported that many complaints of such religion-based persecution in schools have not only not been properly dealt with by the authorities but have even brought down additional reprisals upon the victims.

103. More alarming are reports reaching the Special Rapporteur to the effect that in 2002 the Ministry of Education approved a primer for 16-year-old schoolchildren containing a chapter entitled “The dangers of religious sects”. The primer does not refer to any groups in particular, but describes certain

[s]ects whose activities are banned in other countries because their anti-State, anti-human, and anti-moral preachings have penetrated the country, taking advantage of the difficulties the young State has had establishing itself, the hard socio-economic situation of the population, and our seventy years of living without religion.

104. The authorities explain that investigations have been mounted into matters of this kind, but have had to be broken off owing to the difficulty of identifying those responsible.

105. For technical reasons it was not possible to arrange an interview with the Minister of Education or Ministry staff. The Special Rapporteur believes, nonetheless, that education plays a fundamental role in religious tolerance.

IX. RECOMMENDATIONS

106. **As regards the prosecution of those responsible for acts of religious violence, the Special Rapporteur calls on the Georgian Government to take steps immediately to investigate all acts of violence or religious intolerance which have been committed in Georgia, to put those responsible on trial within a reasonable period and to take them into custody if the courts order a term of imprisonment or pre-trial detention.**

107. **The Special Rapporteur also calls on the Georgian authorities to do everything possible to ensure that the alleged victims of such acts of violence or religious intolerance are able to set forth their grievances before the appropriate court properly and without hindrance.**

108. **The Special Rapporteur draws the Government’s attention in particular to the problems that have surrounded the various hearings into the Mkalavishvili affair. He emphasizes that failure to maintain order in a court of justice has immediate repercussions on respect for international human rights provisions on minimum judicial safeguards. Intimidating or threatening a victim, a witness or a judge is a matter that must be treated with the utmost care, given the extent of its implications on, among other things, the outcome of a case.**

109. **More particularly, such conduct, when judges are the persons intimidated or threatened, is apt to destabilize the independence of the judiciary, a basic feature of democracy but also an essential safeguard for human rights.**

110. **The Special Rapporteur accordingly feels that the judicial rules on the conduct of criminal proceedings have to be scrupulously complied with, especially in the case of the proceedings brought against Basil Mkalavishvili. He also considers that, where these proceedings are**

concerned, the competent authorities ought to take all necessary steps to ensure the complete safety of the victims and applicants for civil indemnification so that they are free to attend the hearings and do not feel threatened. Additional protection should also be provided for anyone called upon to testify in these proceedings.

111. Regarding the status and future of religious minorities, the Special Rapporteur wishes to remind the Georgian authorities that they are under a positive obligation under the relevant international standards, in particular article 18 of the International Covenant on Civil and Political Rights, to provide religious minorities with a modicum of protection so that they can manifest their faith in complete freedom and serenity. The ministries concerned should introduce appropriate arrangements to ensure that all religious minorities can secure the protection of the forces of law and order when required.

112. Regarding the bill on freedom of religion, the Special Rapporteur does not believe it is mandatory to pass such a law for the Georgian authorities' policy on freedom of religion or belief to be consistent with international law. The existing constitutional provisions, plus some amendments to the Civil Code, could also enable Georgia to comply more fully with its international obligations.

113. While there are situations in which ad hoc laws of this kind specify the legal regimes governing the religious or faith-based communities in a particular geographical area and those communities' various rights, thereby guaranteeing the principle of freedom of religion, there are also other situations in which such laws, rather than safeguarding freedom of religion or belief, are used to restrict its effect, thus compromising the safeguards established under international law. The Special Rapporteur emphasizes in this regard that the State's international obligations in the matter of freedom of religion or belief exist irrespective of the existence of an ad hoc law.

114. If the Government should decide it is necessary to pass such a bill, the Special Rapporteur notes that the bill has been assessed for conformity to international law but emphasizes that it is the text eventually adopted that must conform to international law. He thus advises the authorities to ensure that any proposed amendments to the bill are in complete conformity with the acknowledged international standards on freedom of religion or belief.

115. The Special Rapporteur also emphasizes that, despite the differences in numbers of adherents of the religions present in Georgia, one essential feature of the law on religion should be an acknowledgement that the various religions are of equal status under Georgian law.

116. As regards the relationship between the Church and the State, the Special Rapporteur considers that three kinds of situation are generally possible: the State may be subordinate to the Church, the Church may be subordinate to the State, or there may be an intermediate situation leaning towards the former or the latter. The situation in Georgia gives rise to some contradictory

impressions, sometimes suggesting that the State manipulates the Orthodox religion and sometimes that the State is subordinate to the Orthodox Church which uses the State as its organ. In any event, the Special Rapporteur feels that the political use of religion as a tool is just as pernicious as the religious use of politics and that, in the case of Georgia, the constitutional agreement has not helped matters.

117. The Special Rapporteur recommends care on the part of the authorities to ensure that the practical application of the constitutional agreement and other relations between the two institutions do not give rise to confusion between the powers of the State and the Church that might affect the rights of the country's religious minorities.

118. On the subject of statements and speeches arousing religious hatred, the Special Rapporteur refers to article 20 of the International Covenant on Civil and Political Rights and stresses that the principle of freedom of speech cannot serve to justify a failure to take action against individuals who make such statements. Like a number of other rights, freedom of expression is restricted not only by article 20 of the Covenant but also by article 5.

119. The Special Rapporteur draws the Government's attention to the fact that no one should use a political platform to spread messages of religious intolerance; if anyone does, the national authorities should invoke the proceedings established by law to waive the immunity of the individuals behind such conduct.

120. The Special Rapporteur also stresses that freedom of speech does not authorize the press to broadcast messages which might constitute incitement to religious hatred. Incorrectly used and/or used to illegal ends, the press can be a potent vector of intolerance, religious and otherwise; the Special Rapporteur advises the competent authorities to be strict in applying the principle laid down in article 20 of the International Covenant on Civil and Political Rights and to take appropriate steps for the swift prosecution of anyone who commits a criminal offence of this kind.

121. Regarding religious intolerance and education, the Special Rapporteur has noted with much concern that intolerance and, sometimes, religious violence occur in schools. He refers again on this topic to the recommendations made at the beginning of this chapter and emphasizes that in matters of the principle of freedom of religion or belief and minors, the competent authorities should not confine themselves to intervening when there is serious physical violence. A whole series of actions, prima facie benign or not immediately punishable under criminal law, may together amount to substantial encroachment on the exercise of freedom of religion or belief and should, as such, be taken seriously by the authorities.

122. The Special Rapporteur is still more concerned, however, over messages in schoolbooks produced under the direct responsibility of the Government which clearly run counter to religious tolerance and urge their intended readers to reject anyone who claims to be part of one of the non-“traditional” religious minorities which the books in question label “sects”. He calls on the

Georgian authorities to take action to have such passages removed from schoolbooks as swiftly as possible or, if this is infeasible, to withdraw the books and substitute others that do not contain incitements to religious intolerance.

123. **The Special Rapporteur also wishes to stress that religious tolerance can only be acquired if people learn from their earliest childhood about the existence and distinctive characteristics of other religious or faith-based communities. Most situations of religious intolerance, those in Georgia included, stem from ignorance. The Special Rapporteur refers the Georgian Government to the final document of the International Consultative Conference on School Education in relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination held in Madrid from 23 to 25 November 2001, and urges it to put into practice all the recommendations given there.**

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